IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6129 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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URVISHBHAI SURYAKANT SHAH
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MS SA THULA for MR BP GUPTA for Applicant.
MS MANISHA SHAH, APP for Respondent No. 1.
MR MAHENDRA K PATEL for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 29/12/2005

ORAL JUDGMENT

RULE. Ms. Manisha Shah, learned APP waives service of notice of rule on behalf of respondent No.1 and Mr.M.K.Patel, learned advocate waives service of notice of rule on behalf of respondent No.2. With the

consent of the parties, matter is taken up for hearing today.

By filing this application, the applicant has prayed that Criminal Case No. 2533 of 1999 registered before the Judicial Magistrate, First Class, Kalol may be quashed. Aforesaid complaint was filed by respondent No.2 under Section 138 of the Negotiable Instruments Act. As per the averments made in the complaint, the applicant had given a cheque to the complainant which has bounced back because of insufficient funds. Therefore, after giving requisite notice, the complainant has filed aforesaid complaint, which is pending before concerned Court.

Ms.S.A.Thula, learned advocate for the applicant submitted that name of the present applicant is Urvishbhai Suryakant Shah while complaint is filed against one Urvashibhai Shantilal Shah. She further submitted that the applicant is not having any bank account at all and, therefore, the applicant has not replied to the statutory notice given by the complainant and therefore complaint filed against him is required to be quashed. She further submitted that since the applicant has received summons of the Court at his residence, he has filed his appearance before the concerned Court. She further submitted that as the process is issued, learned Magistrate is not in a position recall that order and, therefore, present application is filed by the applicant.

Ms.Thula has relied upon the decision of this Court rendered in Criminal Misc. Application No.9649 of 2005, wherein this Court has observed as under :

> "Before filing the complaint or issuing statutory notice, appropriate care should have been taken by the complainant by verifying the signature of the person and should have booked appropriate person, who has signed the cheque. In my view, the principle of vicarious liability cannot be made applicable in criminal matters. There is nothing on record to show that the applicant was in any way connected with the business of his brother or even remotely he was connected with the transaction in question. The transaction has taken place between the complainant and one Vijay Narayan Yadav. The complainant without proper verification has filed the complaint instead of filing a complaint against the real accused. Unfortunately, the learned Magistrate has also issued process in a mechanical manner without verifying the facts properly. Filing of such complaint is, therefore, nothing but abuse process of law. An innocent person cannot be subjected to criminal proceedings when he is not connected with the business in any manner. Considering the aforesaid aspect of the matter, complaint of the complainant is required to be quashed by exercising powers under Section 482 of the Criminal Procedure Code."

Mr.Patel, learned advocate for the complainant submitted that bank account in question is of real brother of the applicant and it is the applicant, who has taken the amount.

Even if that be so, it is not in dispute that name of the applicant is Urvishbhai Suryakant Shah and the complaint is filed against Urvashibhai Shantilal Shah and there is no such person. It seems that at the time of issuing notice, complainant has not taken appropriate care and complaint is filed against a wrong person. In my view, only because the applicant has accepted the summons of the Court, criminal case cannot be tried against the applicant.

At this stage, Mr.Patel submitted that he may be permitted to take

appropriate civil as well as criminal proceedings against the real accused or even the present applicant by showing his correct name in the complaint. It is needless to say that the complainant can take appropriate recourse available to him as per law.

In view of what is stated herein above, this Court has no option but to quash the complaint. Therefore, this petition is allowed. Complaint being Criminal Case No.2533 of 1999 registered before the Judicial Magistrate, First Class, Kalol Court No.2 is quashed and set aside. Rule is made absolute.

(P.B.MAJMUDAR, J.)

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